

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

December 4, 2019

**Elisabeth A. Shumaker
Clerk of Court**

AARON JOHNSON,

Plaintiff - Appellant,

v.

SALT LAKE CITY, a municipal corporation; JACKIE BISKUPSKI, individually and as Mayor; MARGARET D. PLANE, individually and as Legal Director; ERIN MENDENHALL, individually and as 5th District City Councilor and Council Chair; CHRIS WHARTON, individually and as 3rd District Councilor and Council Co-Chair; BRIAN FULMER, individually and as assistant to Chris Wharton; RALPH BECKER, individually and as former Salt Lake City Mayor; STAN PENFOLD, individually and as former 3rd District Councilor; DEREK KITCHEN, individually and as 4th District Councilor; CHRIS BURBANK, individually and as former Salt Lake Chief of Police; YOLANDA FRANCISCO-NEZ, individually and as former 3rd District Councilor; MATHEW ROJAS, individually and as Director of Communications for the Mayor's Office,

Defendants - Appellees.

No. 19-4161
(D.C. No. 2:18-CV-00467-HCN-CMR)
(D. Utah)

ORDER

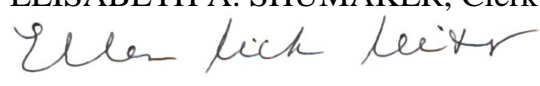
Before **PHILLIPS, EID**, and **CARSON**, Circuit Judges.

This court lacks jurisdiction over this appeal.

The plaintiff appeals from an order entered by a magistrate judge denying his motion to recuse. This is not appealable to this court. Except for proceedings conducted by the magistrate judge on consent of the parties pursuant to 28 U.S.C. § 636(c), a court of appeals lacks jurisdiction to hear an appeal taken directly from a decision of a magistrate judge. *See Colorado Building & Construction Trade Council v. B.B. Andersen Construction Co.*, 879 F.2d 809 (10th Cir. 1989). Moreover, the denial of a motion to recuse is not a final order and is not immediately appealable. *See Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995).

The plaintiff's argument in his notice of appeal that this court has jurisdiction under 28 U.S.C. § 1292(b) is without merit. Section 1292(b) requires certification from the district court that the order at issue "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation" before this court may consider whether to grant permission to appeal. The district court did not issue such a certification.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

by: Ellen Rich Reiter
Counsel to the Clerk

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

December 04, 2019

Chris Wolpert
Chief Deputy Clerk

Mr. Aaron Johnson
646 West 500 North
Salt Lake City, UT 84116

RE: 19-4161, Johnson v. Salt Lake City, et al
Dist/Ag docket: 2:18-CV-00467-HCN-CMR

Dear Appellant:

Enclosed please find an order issued today by the court.

Please contact this office if you have questions.

Sincerely,



Elisabeth A. Shumaker
Clerk of the Court

cc: David F. Mull
Allison Parks

EAS/jm